United Nations A/60/565

General Assembly

Distr.: General
25 November 2005

Original: English

Sixtieth session
Agenda item 71 (b)
Human rights questions: human rights questions, including alternative approaches for improving the effective enjoyment of human rights and fundamental freedoms

Report of the Secretary-General on Khmer Rouge trials

Summary

The present report provides details on the progress achieved towards establishing the Extraordinary Chambers for the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea, since the report of the Secretary-General of 12 October 2004 and its addendum of 29 November 2004 (A/59/432 and Add.1).

The General Assembly is requested to take note of the report and to decide to deem the international judges, the international co-prosecutor and the international co-investigating judge to be officials of the United Nations for the purpose of their terms and conditions of service.

05-61772 (E) 281105

I. Introduction

1. Since the issuance of the report of the Secretary-General of 12 October 2004 on the Khmer Rouge trials (A/59/432) and its addendum dated 29 November 2004 (A/59/432/Add.1), there has been substantial progress towards the establishment of Extraordinary Chambers for the Prosecution under Cambodian Law of Crimes Committed during the period of Democratic Kampuchea.

II. Pledging conference to meet the resource requirements

2. In paragraph 14 (b) of A/59/432 and paragraph 6 of its addendum, I noted that the process of setting up the Extraordinary Chambers could be initiated only when sufficient money was in place to fund the staffing and the operations for a sustained period of time. I stated that I would consider that condition to have been met when pledges for the full three years of operation of the Chambers as well as actual contributions for their first year of operations had been received.

3. The budgetary requirements for establishing and operating the Extraordinary Chambers and their related institutions over three years have been worked out and were agreed between the Government of Cambodia and the United Nations in December 2004. The total budget for the anticipated three years of operation of the Extraordinary Chambers is estimated at $56.3 million. Of that amount, the share of the United Nations would be $43 million and that of the Government of Cambodia $13.3 million. On the basis of those final figures, a pledging conference was held at United Nations Headquarters in New York on 28 March 2005, and sufficient contributions and pledges were received by the United Nations to fund the international staffing of the Extraordinary Chambers and their operations for a sustained period of time.

III. Entry into force of the Agreement

4. On 28 April 2005 a notification was sent to the Government of Cambodia indicating that the legal requirements on the United Nations side for the entry into force of the Agreement between the United Nations and the Royal Government of Cambodia concerning the Prosecution under Cambodian Law of Crimes Committed during the Period of Democratic Kampuchea, done at Phnom Penh on 6 June 2003, had been complied with. The Agreement accordingly entered into force on 29 April 2005, the day after the notification, in accordance with its article 32. The Government of Cambodia had previously provided its notification under that article, on 16 November 2004.

IV. New site for the Extraordinary Chambers and affiliate institutions

5. During the last visit of the United Nations technical team to Phnom Penh, in December 2004, the Government of Cambodia proposed the Royal Cambodian Armed Forces High Command Headquarters, in Kandal province, as an alternative, single site for the Office of the Co-Prosecutors, Office of the Co-Investigating

Judges, Extraordinary Chambers, Pre-Trial Chambers and Office of Administration. In July 2005, the United Nations informed the Government of Cambodia that consultations with interested States had led to the conclusion that the United Nations could concur with the proposal, provided that (a) those premises were totally enclosed and fenced off from the active military facility, (b) separate and direct access to the premises was provided and (c) adequate arrangements were made by the Cambodian Government for public transportation between the centre of Phnom Penh and the site in order to ensure the widest possible attendance at the trials. In its response in August 2005, the Government of Cambodia confirmed its agreement to these three conditions. At the same time, it indicated that the work on improvements to the site and premises would take three months, but could begin only when contributions were received to complete the funds required for the Cambodian share of the budget.

V. Appointment of an international Deputy Director of the Office of Administration

6. In accordance with article 8, paragraph 3, of the Agreement, there shall be an international Deputy Director of the Office of Administration who shall be responsible for the recruitment of all international staff and all administration of the international components of the Extraordinary Chambers, the Pre-Trial Chamber, the co-investigating judges, the Prosecutors' Office and the Office of Administration. Article 8, paragraph 3, of the Agreement further provides that the United Nations and the Royal Government of Cambodia agree that, when an international Deputy Director of the Office of Administration has been appointed by the Secretary-General, the assignment of that person to that position by the Royal Government of Cambodia shall take place forthwith. I appointed, effective 14 October 2005, Michelle Lee, formerly Chief of the Division of Administrative Support Services, International Criminal Tribunal for Rwanda and recently designated as Coordinator of the United Nations Assistance to the Khmer Rouge Trials, as the international Deputy Director of the Office of Administration. Confirmation of her assignment to that position by the Royal Government of Cambodia is expected shortly.

VI. Nomination of judges, co-prosecutor and co-investigating judge and their legal status

7. The Agreement provides, in article 3, for a Trial Chamber, composed of three Cambodian judges and two international judges, and a Supreme Court Chamber, composed of four Cambodian judges and three international judges. In accordance with article 3, paragraph 5, of the Agreement, these five international judges are to be appointed by the Supreme Council of the Magistracy of Cambodia from a list of not less than seven nominees forwarded by the Secretary-General. The other nominees are to remain available for appointment as international judges in the event of a vacancy. They may also be designated to serve as alternate judges in specific cases, in accordance with article 3, paragraph 8, of the Agreement.

8. The Agreement also provides, in article 6, for a Cambodian prosecutor and an international prosecutor, serving as co-prosecutors. In accordance with article 6, paragraph 5, the international co-prosecutor is to be appointed by the Supreme Council of the Magistracy of Cambodia from a list of two nominees forwarded by the Secretary-General. The other nominee is to be appointed as a reserve international co-prosecutor, to fill the post of international co-prosecutor in the event a vacancy or the need arises.

9. The Agreement further provides, in article 5, for a Cambodian investigating judge and an international investigating judge, serving as co-investigating judges. In accordance with article 5, paragraph 5, the international co-investigating judge is to be appointed by the Supreme Council of the Magistracy of Cambodia from a list of two nominees forwarded by the Secretary-General. The other nominee is to be appointed as a co-investigating judge, should the need arise.

10. Finally, the Agreement provides, in article 7, for a Pre-Trial Chamber, consisting of three judges appointed by the Supreme Council of the Magistracy of Cambodia and two judges appointed by the Supreme Council of the Magistracy upon nomination by the Secretary-General. The Pre-Trial Chamber is to be convened, and its judges to serve, only if and when needed, in order to settle differences between the co-prosecutors or between co-investigating judges.

11. On 30 June 2005, the Legal Counsel, on behalf of the Secretary-General, sent out letters to all States inviting them to suggest the names of individuals whom the Secretary-General might nominate as indicated above. Short lists of candidates for each of these positions have now been established and made public and the individuals concerned contacted and invited for interviews in New York.

12. It will be recalled in this connection that in my reports of 31 March 2003 and 12 October 2004 to the General Assembly (A/57/769, paras. 58-59, and A/59/432, para. 29) I recommended to the General Assembly that it adopt a decision deeming the international judges, the international co-prosecutor and the international co-investigating judge to be officials of the United Nations for the purpose of their terms and conditions of service. I would like to reiterate my recommendation that the General Assembly adopt such a decision, which is important for the credibility of the Extraordinary Chambers and to ensure their independence and impartiality, both actual and perceived.

VII. Conclusion

13. **The General Assembly may wish to take note of the present report and to decide that the international judges, the international co-prosecutor and the international co-investigating judge be deemed to be officials of the United Nations for the purpose of their terms and conditions of service.**